IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.6437 OF 2005

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and registrar's Orders.	Court's or Judge's Orders

Mr.S.M.Rairikar with S.W.Kulkarni for petitioners

Mr.R.A.Thorat i/b M/s. Banatwala & Co. for respondents

CORAM : P.V.KAKADE, J.

DATE : 24TH APRIL, 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. Rule, rule made returnable forthwith by consent.

3. The petitioners-defendants have filed this petition against the order dated 19.8.2005 passed by the trial court discharging his notice and rejecting the application for permission to further cross examine the plaintiffs' witness.

4. The learned trial judge appears to be of the view that the sufficient time was already granted and the ground that the advocate concerned was engaged in some other matter was not sufficient to allow the application and therefore the notice came to be discharged.

5. Without further elaboration, I must note that the provision of Order 17 Rule 2(c) of Civil Procedure Code cannot be said to be mandatory but is only directory for the purpose of smooth and speedy adjudication of the dispute. However, that does not mean that court should be hyper sensitive in such matter which ultimately

amounts to deprival of the party to put up their defence fully and effectively in any particular manner.

6. In the result, I am inclined to allow the petition with certain directions. Hence, rule is made absolute. The petition is allowed with direction that the trial court shall allow the petitioners-defendants to further examine the Plaintiffs'' said witness and both the parties, if found so necessary, shall be allowed to proceed with further evidence. All this process is further directed to be completed within the period of three months from the date of this order. With this direction the petition stands disposed of with no order as to costs.